

U.S.S.N.: 08/488,097

Filed: June 7, 1995

AMENDMENT AND RESPONSE TO OFFICE ACTION

CS <sup>7</sup>39. A pharmaceutical composition comprising an effective amount to treat HIV in humans of the acetyl, propionyl, butyryl, or pentanoyl ester of  $\beta$ -2-hydroxymethyl-5-(5-fluorocytosin-1-yl)-1,3-oxathiolane.

Remarks

Claims 1-12 and 35-36 were previously pending. Applicant has now canceled claims 1, 3, 4, 6, 7, 9, 10, 35, and 36, leaving claims 2, 5, 8, 11 and 12 pending. New claims 37-39 have been added directed to pharmaceutical compositions that include the compounds of claims 2, 5, 8, 11, and 12.

In the Office Action mailed on January 6, 1998, the Examiner rejected claims 3-7, 10, 11 and 36 under 35 USC 112, second paragraph as indefinite. Of these claims, only 5 and 11 remain. The Examiner rejected claims 4-7, 10 and 11 because the terms "acetic, propionic, butyric and pentanoic" are not proper names for chemical radicals. Applicants have amended claims 5 and 11 as requested by the Examiner.

The Examiner rejected previously pending claims under the judicially created doctrine of obviousness-type double patenting over claims in U.S.S.N. 08/402,730; U.S.S.N. 08/474,406; and U.S.S.N. 08/482,875. Without agreeing or disagreeing with the Examiner and merely to advance the prosecution of the present application, Applicants submit a Terminal Disclaimer which disclaims the terminal portion of any patent issuing from this application

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which would extend beyond the term of any patent issuing from the '730, '875, or '406 application.

Applicants bring to the Examiner's attention U.S.S.N. 08/017,820, which was allowed on April 29, 1998. A copy of the allowed claims and the Notice of Allowance is enclosed.

Applicants also enclose copies of priority documents U.S.S.N. 07/473,318 filed on February 1, 1990, and U.S.S.N. 07/659,760, filed on February 22, 1991, for the Examiner's reference.

In light of the amendments to the claims and the Terminal Disclaimers submitted herewith, Applicants request that the Examiner allow all of the pending claims.

Respectfully submitted,

  
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